

MAINE STATE LEGISLATURE

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State Jurisdiction Federal Properties

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 31, 1976

Major Daniel J. Gallington
Staff Judge Advocate
Department of the Air Force
Loring Air Force Base, Maine 04751

Dear Major Gallington:

The following is our response to your inquiry of June 9 as to our opinion of the jurisdictional status with respect to law enforcement of Caswell Air Force Station. Please be advised that this opinion is based upon the facts supplied by you as to the circumstances of Caswell Air Force Station.

I. QUESTION: Whether the State of Maine has concurrent jurisdiction with the federal government to investigate, prosecute, and provide law enforcement support against criminal activity committed at Caswell Air Force Station?

II. CONCLUSION: The federal government has a proprietorial interest only in Caswell Air Force Station. The United States has not accepted exclusive, concurrent, or partial jurisdiction over this federal enclave. Therefore, the State of Maine has sole jurisdiction to prosecute criminal activity committed at Caswell, and the State may investigate and provide law enforcement support against crime at the Station.

III. RATIONALE: The federal government acquired the land comprising Caswell Air Force Station in 1951 or 1955. An Inventory Report on Jurisdictional Status of Federal Areas Within the States, as of June 30, 1962, compiled by the General Services Administration, lists 1951 as the year of federal acquisition. A letter in the files of Loring Air Force Base states that the date of acquisition was May 25, 1955. Since

¹Letter from F. V. Bonzagni, Division Counsel, U.S. Army Engineer Division, New England, Waltham, Mass. 02154, to Headquarters, 42d Combat Support Group (SAC), Loring Air Force Base, 04750, March 18, 1968, found in Criminal Research Information Bank under H §2.3 Federal-State Conflict.

Maine statutes concerning cession of jurisdiction and the federal statute concerning acceptance of jurisdiction were the same for both 1951 and 1955, the use of either year does not change the analysis of the jurisdictional status of Caswell.²

²The Maine statute concerning cession of jurisdiction in force for 1951 was Laws of Maine, Ch. 1, §12 (1944). The cession statute in force for 1955 was R.S. 1954, Ch. 1, §10. Both statutes read:

Exclusive jurisdiction in and over any land acquired under the provisions of this chapter by the United States shall be, and the same is ceded to the United States for all purposes except the service upon such sites of all civil and criminal processes of the courts of this state; provided that the jurisdiction ceded shall not vest until the United States of America has acquired title to such land by purchase, condemnation or otherwise; the United States of America is to retain such jurisdiction so long as such lands shall remain the property of the United States, and no longer; such jurisdiction is granted upon the express condition that the State of Maine shall retain a concurrent jurisdiction with the United States on and over such lands as have been or may hereafter be acquired by the United States so far as that all civil and criminal process which may lawfully issue under the authority of this state may be executed thereon in the same manner and way as if said jurisdiction had not been ceded, except so far as said process may affect the real or personal property of the United States.

The federal statute concerning acceptance of jurisdiction in force for both 1951 and 1955 reads in part:

Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the state in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance

The Maine Supreme Court has interpreted the language of Maine cession statutes in force for 1951 and 1955 to cede exclusive jurisdiction over federal acquisitions in those years to the United States. Exclusive jurisdiction includes the sole power for criminal law enforcement and prosecution. State v. Allard, 313 A.2d 439, 444 n.7, 447 (Me. 1973). The statutes reserve for the state the power only to serve civil or criminal processes on persons located in federal enclaves for outside activities. State v. Allard, 313 A.2d 439, 445-450 (Me. 1973).³ According to 40 U.S.C.A. §255, however, state cessions of jurisdiction over federal acquisitions in 1940 or later do not effectively cede any jurisdiction to the U.S. unless the federal government formally accepts the state's offer. This

with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

40 U.S.C.A. §255 (1969), as amended, (Supp. 1976).

³In Allard, the Maine Supreme Court interpreted the language of Laws of Maine, Ch. 248 (1939), amending R.S. 1930, Ch. 2, §11. This interpretation applies to Laws of Maine, Ch. 1, §12 (1944) and R.S. 1954, Ch. 1, §10 as the language of the 1939 amendment is nearly identical to that of the later statutes. The amended version of R.S. 1930, Ch. 2, §11 reads:

Exclusive jurisdiction in and over any land so acquired [in accordance with R.S. 1930, Ch. 2, §10 giving legislative consent to federal acquisitions of land within the state for public buildings and other public purposes] by the United States shall be, and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal processes of the courts of this state; provided, that the jurisdiction hereby ceded shall not vest until the United States of America has acquired title to such land by purchase, condemnation, or otherwise; the United States of America are to retain such jurisdiction so long as such lands shall remain the property of the United States, and no longer; such jurisdiction is granted upon the express condition that the State of Maine shall retain a concurrent jurisdiction with the United States on and over such lands as have been or may hereafter be acquired by the United States so far as that all

rule applies to state cessions of exclusive, concurrent, or partial jurisdiction over federal lands used for military and civilian purposes alike. Adams v. United States, 319 U.S. 312 (1943); State v. Allard, 313 A.2d 439 (Me. 1973); People v. Sullivan, 151 Colo. 434, 378 P.2d 633 (1963); Dobbins v. State, 114 Ga. App. 403, 151 S.E.2d 549 (1966); State v. Burell, 256 N.C. 288, 123 S.E.2d 795 (1962). The proper form of federal acceptance involves filing a notice with the Governor of the state in which the federal enclave is located or in the manner prescribed by the state's laws. 40 U.S.C.A. §255; Adams v. United States, supra. Absent the filing of a notice by the federal government, the state retains jurisdiction over the federal acquisition and can not be divested of it. People v. Sullivan, supra; Dobbins v. State, supra; State v. Burell, supra. Cf. Adams v. United States, supra; Atkinson v. State Tax Commission, 303 U.S. 20 (1938). A state cession statute to which the federal government does not respond with an acceptance does not create a "no-man's land" in which crimes may be committed with immunity. State v. Burell, supra.

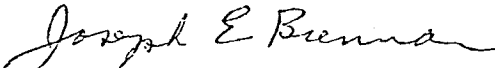
Checks through the Journal Register of the Council from 1951 to the present, the files in the Secretary of State's Office, and with Joseph Hochadel of the Governor's Office, indicate that the federal government has not filed an acceptance of the exclusive jurisdiction ceded by Laws of Maine, Ch. 1, §12 (1944), or R.S. 1954, Ch. 1, §10, over Caswell Air Force Station. Therefore, the State of Maine retains jurisdiction to prosecute and provide law enforcement support against crime committed on the military base. This conclusion is consistent with the Inventory Report on Jurisdictional Status of Federal Areas Within the State, as of June 30, 1962, compiled by the General Services Administration. The report states that the jurisdictional status of Caswell is a "proprietary interest only." This term means that the U.S. has acquired a right or title to the property of the base without obtaining any measure of a state's authority over the area. Inventory Report, p. 12; Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, Jurisdiction over Federal Areas within the States, Part I, p. 14 (April, 1956).

civil and criminal process which may lawfully issue under the authority of the State of Maine may be executed thereon in the same manner and way as if said jurisdiction had not been ceded, except so far as said process may affect the real or personal property of the United States.

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I trust this answers fully the questions that were posed in your letter of June 9.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/lw